ANALYTICAL LABORATORY SERVICES AGREEMENT

THIS AGREEMENT is made this Day of 2020

BETWEEN

BuHler lIMITED of Post Office Box Number 44553; 00100 Nairobi, (hereinafter referred to as “Buhler” which expression shall where the context so admits include its successors and assigns) of the one part;

AND

 of Post Office Box Number (hereinafter referred to as “the Customer” which expression shall where the context so admits include its successors and assigns) of the other part.

General Terms and Conditions for Laboratory Services

1. **General Items**

These terms and conditions shall be applicable as far as the parties have reached no other written agreements to the contrary.

An order for an analysis shall be considered as accepted by Buhler as soon as Buhler confirms the customer’s written order using the form “Request for Laboratory Test” in writing. Any order by phone or cancellation by the customer must also be confirmed in writing in the same way.

All laboratory services performed by Buhler shall be subject to the General Terms and Conditions mentioned below. No other terms and conditions of ordering by the customer shall be accepted.

1. **Sample/Test Material (raw material, intermediate products, reference samples, etc.)**

The customer shall be responsible for drawing the samples. The analysis result will reflect the average of all samples. The test material shall be delivered free to:

 **Buhler Limited/African Milling School**

 **Sukari Industrial Estate, Ruiru**

The following information must be affixed in a clearly visible and legible way:

* Exact address of the sender and of the customer
* Most accurate labelling of the test material or of the individual components possible
* Notes on precautions for handling, storage, or disposal
* Safety data sheets.

The material shall be provided free of charge by the customer unless otherwise agreed in the quotation. The customer has to bear the accrued costs if Buhler has to provide the material. The required quantity shall depend on the specific test in question (test equipment, expected throughput, period of testing, etc.).

For individual samples, Buhler shall decide whether any sample splitting or any special sample preparation are required (cost charged according to tariff or hourly rate). The sample material will be retained for maximum 6 months (except for perishable goods). The samples of internal customers must be collected by them after the result has been obtained (no storage).

1. **Handling of surplus, consumed, and non-consumed test materials**

The cost of packing, shipping, customs, and insurance shall be borne by the customer. The test material shall only be returned upon the customer’s instructions and at the customer’s expense. In this case, the customer shall dispose of the materials in a proper and legally compliant manner and shall indemnify Buhler against any third-party claims arising from the infringement of such regulations. The shipping instructions (address, shipping mode, papers, information concerning value, pro-forma invoice, packing type, etc.) shall be provided by the customer or, if requested, executed by Buhler at the customer’s expense. If in exceptional cases destruction or storage in special waste storage facilities is requested or required, Buhler shall take the necessary action at the customer’s expense.

1. **Analysis Procedure and Results**

Buhler requires the analysis criteria before the start of the tests (e.g. measurement criteria, method, measurement values, etc.). The analysis results shall be made available to the customer in a written form. Upon completion of the tests and as soon as the results are available, Buhler shall establish a data sheet which shall be sent to the customer.

A third-party laboratory shall only be involved with the customer’s approval. The development of new analysis procedures or analysis procedures not described shall be at the customer’s expense (if requested by the customer, a cost quotation shall be submitted in advance).

1. **Delivery Time**

The delivery time for standard tests is typically five business days. Orders with higher requirements may take longer, of which the customer will be notified. Express analysis orders (delivery time 1-3 days) require advance notification by phone.

In case of force majeure, any liability for damage arising from the non-observance of a delivery date shall be declined.

1. **Prices and Terms of Payment**

The prices apply to the relevant products according to the “Price List for Analytical Services”. For express analysis orders, a surcharge of 30% shall be paid.

Any necessary additional requirements (e.g. sample preparation or adjustment of the analysis procedure necessitated by the product) shall be charged separately. Consulting services shall be charged according to the actual expenditure. If requested, the customer shall be offered a cost quotation.

The tests costs shall be charged on the basis of the actual expenses so that the final price may be higher or lower than the quoted price. The tests costs shall be considered as accepted if the customer does not reject the quotation in writing before the tests start.

If the customer cancels an order already placed, the costs that have been incurred up to the date of cancellation shall be charged.

The prices are exclusive of value added tax. Services are invoiced on a monthly basis, payable net within 30 days of the invoice date.

1. **Secrecy**

Buhler shall not disclose any analysis results to any third parties and shall subject its employees to the same secrecy obligation, also for the time after they have left the company. All third parties who are involved as consulters or for executing tests shall be subject to the same obligation.

This secrecy obligation shall apply for the entire period of the order and three years beyond it. It does not apply to any knowledge that the partners possessed already before placement of the order, that are already known, or that were legally acquired by other means.

1. **Liability**

Any liability for analysis results and their consequences (respectively the consequences of their use) shall be excluded to the extent permitted by the applicable law.

The customer shall inform Buhler of the handling instructions and the hazards associated with the test material (in case of hazards to health or caustic, self- ignition, water-polluting, flammable, explosive, etc. properties). The customer shall be held liable for any damage and accidents caused by missing or faulty information or attributable to defective packaging or labelling.

In the absence of mandatory legal provisions to the contrary, Buhler shall not be held liable by the customer for property or financial damage or other direct or indirect damage, irrespective of their cause or legal nature.

1. **Use of Analysis Results**

Analysis results (in particular but not limited to analysis results illustrated by means of figures, graphics, graphs, diagrams, pictures, photos and the like) shall be reproduced or used by the customer – in what form and for what purpose whatsoever – in an unaltered matter. Any logos of Buhler or any information directly or indirectly inferring on Buhler shall be used by the customer vis-à-vis third parties with Buhler’s prior written approval only.

1. **Coming into Effect, Lifetime**

The present Agreement comes into effect for an indeterminate period on being signed by both parties.

To be valid, amendments or additions to the present Agreement must be in written form and bear the signatures of both parties.

1. **Termination**

Either Party may terminate this Agreement by issuing to the other Party a one (1) months’ prior written notice.

1. **Termination by Buhler**

If unforeseen events considerably change the economic effect or the content of the Services, or if the performance subsequently becomes impossible, the Agreement shall be adopted accordingly. If such adaption is economically not justifiable, Buhler shall be entitled to terminate the Agreement or the parts affected thereby. Buhler shall immediately after recognition of the consequences of the event, inform the Customer. In case of termination Buhler shall be entitled to payment of those parts of the Services which have already been performed. Claims for damages from the Customer because of such termination are excluded.

1. **Force Majeure**

Any event, which was unforeseeable at the time of conclusion of the Agreement, is beyond either party’s control and renders the further performance of contractual obligations impossible or unreasonably onerous, as for instance adverse weather conditions or other acts of nature (including, but not limited to, earthquake, hurricane, landslide, or flood), war (declared or not), acts of terrorism, sabotage, piracy, riot, fire, explosion, epidemics, actions or inactions of governmental or quasi-governmental authorities or shortages of labour, fuel, or raw materials qualifies as a force majeure event (“Force Majeure”).

If a Force Majeure event lasts longer than consecutive 6 months either party shall be entitled to terminate the Agreement at any time by giving ten business days prior written notice. For the avoidance of doubt, in case of a Force Majeure event the Customer shall not be entitled to claim any damages or any other compensation

1. **Severability**

If any provision of the Agreement shall be found to be invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the other provisions of the Agreement. The parties shall substitute any invalid or unenforceable provision with provision that achieves to the greatest extent possible the same legal and commercial objectives.

1. **Place of Jurisdiction and Applicable Law**

The place of jurisdiction is Nairobi. The contract is governed exclusively by Kenyan Law.

The effective date of this agreement is the date upon which the last of the Parties signs this agreement.

On behalf of **Buhler Limited:**

 Place:

Signature: Date:

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Name, Function Name, Function

**On behalf of the Customer:**

 Place:

Signature: Date:

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Name, Function Name, Function